

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHNATHAN WAGLEY,	§
	§
Petitioner,	§
VS.	§ CIVIL ACTION NO. 2:15-CV-51
	§
WILLIAMS STEPHENS,	§
	§
Respondent.	§

**MEMORANDUM AND RECOMMENDATION TO DISMISS
CASE FOR FAILURE TO PROSECUTE**

Petitioner is an inmate in the Texas Department of Criminal Justice-Correctional Institutions Division (“TDCJ-CID”) and is currently incarcerated at the McConnell Unit in Beeville, Texas. Petitioner filed this petition pursuant to 28 U.S.C. § 2254 on January 16, 2015. (D.E. 1).

On April 16, 2015, Petitioner was ordered to either pay the \$5.00 filing fee or show cause why he is unable to do so within thirty (30) days. (D.E. 10). Petitioner was notified that failure to comply with the show cause order or to pay the filing fee would result in the dismissal of his case. (D.E. 4); Fed. R. Civ. P. 41. Petitioner has failed to comply.

Therefore, it is respectfully recommended that Petitioner’s case be DISMISSED pursuant to Fed. R. Civ. P. 41(b); *see also Martinez v. Johnson*, 104 F.3d 769, 772 (5th

Cir. 1997)(holding district courts have the power to *sua sponte* dismiss a cause of action for failure to prosecute).

ORDERED this 27th day of May, 2015.



Jason B. Libby
United States Magistrate Judge

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(c); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a Magistrate Judge's report and recommendation within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).